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June 11, 2019

Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219
pilotprogram@occ.treas.gov

Re: Response to the Office of the Comptroller of the Currency's Innovation Pilot Program

To Whom It May Concern:

The Milken Institute would like to thank the Office of the Comptroller of the Currency (OCC) for the opportunity to respond to the OCC's latest effort to develop an Innovation Pilot Program (IPP).

The Milken Institute¹ is a nonprofit, nonpartisan think tank determined to increase global prosperity by advancing collaborative solutions that widen access to capital, create jobs, and improve health. The Milken Institute Center for Financial Markets (CFM)² promotes financial market understanding and works to expand access to capital, strengthen and deepen financial markets, and develop innovative financial solutions to the most pressing global challenges.

Launched in October 2014, CFM's financial technology (FinTech) program seeks to educate policy makers and industry stakeholders on the impact of FinTech and its implications for public policy. The program promotes responsible innovation that improves access to capital, drives financial inclusion, and fosters transparency and compliance.

The Institute is encouraged to see the OCC's continued interest in developing new tools within its regulatory toolkit³ that seek to foster responsible innovation in today's financial services sector. The IPP could become a practical tool for OCC-supervised institutions to utilize given the continued interest in collaboration among FinTechs and banks, as well as the need for regulatory clarity surrounding the development of new and unique financial models or services.

There are several positive steps the OCC has taken with the IPP, including:

¹ <http://www.milkeninstitute.org/>

² <http://www.milkeninstitute.org/centers/markets>

³ Chris Brummer and Daniel Gorfine, "FinTech: Building a 21st-Century Regulator's Toolkit." Milken Institute Center for Financial Markets. October 21, 2014. Available at: <https://www.milkeninstitute.org/publications/view/665>

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- **Avoiding favoritism and maintaining robust protections.** We share the OCC's concern about the cohort model adopted by several regulatory sandboxes currently in existence around the world. In a prior paper,⁴ we noted our concern that the cohort model could lead to regulatory favoritism of a particular model, product, or service. The OCC rightly addresses this challenge in the IPP, while also reducing concerns about the potential relaxation of certain regulations by disallowing the issuance of any statutory or regulatory waivers.
- **Responsibly managing agency resources.** By restricting the IPP to OCC-supervised institutions, including those engaging with a third party to offer an innovative activity, these eligible entities already have an established relationship with the OCC and an understanding of current regulatory frameworks applicable to their business.

We have heard from various regulatory authorities in other jurisdictions on the challenges associated with the development and implementation of a regulatory sandbox. One of the biggest concerns raised by these authorities are the upfront costs associated with educating startups and mature growth platforms on current regulatory frameworks and how these may apply to innovative business models or products. Similarly, getting innovative startups to the point of being able to file a suitable application can take a considerable amount of time and resources.

OCC-supervised institutions already have the personnel in place with the requisite understanding of current regulatory constructs and connections with OCC staff, whether through the OCC's Innovation Office or assigned supervisory office. Restricting eligible entities to only OCC-supervised institutions could effectively reduce the upfront time and cost that the agency will have to put towards informing and educating potential applicants about the IPP process.

- **Addressing potential risks before they materialize.** In its latest Semiannual Risk Perspective,⁵ the OCC identified several reasons why operational risk remains elevated among the agency's supervised financial institutions, including continued innovation in financial products and services, and the increased use of third-parties "to provide and support operations that are not effectively understood, implemented, and controlled."

The OCC also found that banks that "do not assess business relevancy and impacts from technological advancement or innovation, or are slow adopters to industry changes, may be exposed to increasing strategic risk."⁶

⁴ Jackson Mueller, "FinTech: Considerations on How to Enable a 21st Century Financial Services Ecosystem." Milken Institute Center for Financial Markets. August 3, 2017. Available at: <https://www.milkeninstitute.org/publications/view/872>

⁵ "OCC Semiannual Risk Perspective, Spring 2019." Office of the Comptroller of the Currency. May 20, 2019. Available at: <https://www.occ.treas.gov/news-issuances/news-releases/2019/nr-occ-2019-49.html>

⁶ Id.

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These risks can be mitigated through the IPP given the agency's interest in early (and often) engagement with eligible entities, including consideration of proposals in varying stages of development. The IPP could further stimulate collaboration between eligible entities and third parties by reducing the "regulatory fear"⁷ that often acts as a barrier to incumbents' willingness to work with third parties to offer innovative products and services. As we previously stated,⁸ the risk that the OCC seems most concerned about is the risk of inaction. The IPP is specifically designed to mitigate such risk by encouraging banks not to stand idle.

To further strengthen the IPP, we respectfully submit the following recommendations:

- ***Providing several hypothetical examples of what an Expression of Interest (EOI) document could look like.*** To reduce further the upfront cost to both the OCC and potential applicants, we would encourage the agency to develop, and make public, examples of what an EOI document could look like covering several activities. The information on what an EOI could contain, as identified in the IPP proposal, is quite broad. Having the OCC provide several hypothetical EOIs as examples could provide greater clarity to interested applicants and further reduce the level of regulatory resources required at the outset to ensure applications satisfy the OCC's expectations.
- ***Defining the exit strategy for a successful pilot.*** The OCC makes clear that participants identify an exit strategy if the pilot is found to be unsafe or unsound, places consumers at undue risk of harm, or does not meet its intended goals. However, it is unclear what an exit strategy looks like for successful pilots. After the test, will eligible entities, especially those whose pilots involved live testing with customers, be allowed to offer innovative products and services nationally? We recommend the OCC provide clarity around what happens after the testing period ends for participants (assuming a successful test) and any next steps participants can take.
- ***Developing an appropriate timeline to inform interested participants.*** In the IPP proposal, the OCC does not provide any indication on when applicants will hear back from the OCC once an EOI is submitted. While we realize the process and applications will vary from entity to entity, we recommend the OCC provide a timeline for initial responses to submitted EOIs. Then, eligible entities can build this into their plans to more accurately estimate the length of time the entire process will take from the first meeting to exiting the pilot.

⁷ Peter Renton, "Podcast 170: Dan Quan, Formerly with the CFPB." Lend Academy. October 5, 2018. Available at: <https://www.lendacademy.com/podcast-170-dan-quan-formerly-with-the-cfpb/>

⁸ Dan Murphy, "FinTech in Focus: May 29, 2019." Milken Institute Center for Financial Markets. Available at: <https://www.milkeninstitute.org/blog/view/1354>

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- ***Providing effective feedback loops.*** We recommend the OCC develop a questionnaire to be submitted to participants that are close to completing the pilot program to obtain feedback on the IPP. The questionnaire should allow for participants to voice any unnecessary challenges that they faced and what improvements should be undertaken to ensure the IPP remains an effective regulatory tool. We also recommend that the responses be anonymized and included in publicly available materials covering the results of the IPP and how the OCC addressed, or plans to address, the feedback.

The Milken Institute Center for Financial Markets would again like to thank the OCC for providing the opportunity to comment on the IPP, and we welcome the opportunity to discuss our recommendations further with the agency.

Sincerely,

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